IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8559 of 1992

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HASAN ALI UMAR

Versus

DHARAMVIRSINHJI MAHENDRASINHJI

Appearance:

MR HB SHAH for Petitioners

MR BJ JADEJA for Respondents Nos. 1-3

MS VASUBEN P SHAH for Respondent No. 4

MR DHIRENDRA MEHTA for Respondent No. 5

MS HANSABEN PUNANI AGP for Respondent No. 6

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 14/08/2001

ORAL JUDGEMENT

Heard the learned advocates.

The subject matter of dispute is the lands of village Kavli, Taluka-Jambusar, District-Bharuch. It is undisputed fact that village Kavli was an Inami village and the predecessor of the respondents nos. 1 to 5 was the Inamdar thereof. It is also an undisputed fact that the petitioners herein were cultivating the said lands for times immemorial. The question is whether on abolition of the Inamdari under the Bombay Personal Inam Abolition Act, 1952 [hereinafter referred to as, `the Act], would the Inamdar be the occupant of the said land or whether the petitioners should be considered to be the occupants of the said lands. On an application made by the petitioners, under Order dated 27th March, 1955 made by the Mamlatdar, Jambusar, the name of the petitioners were ordered to be deleted from the records of rights and the name of the persons who were said to be on the land and in possession, were accepted as persons entitled to the status of occupants. The said order was confirmed by the Deputy Collector on 30th April, 1956 and by the State Government on 3rd April, 1957. Feeling aggrieved, the Inamdar instituted a Civil Suit in the year 1958. The said suit was decreed by the trial Court which was challenged before this Court by the State Government in First Appeal No. 122 of 1972. The said First Appeal was decided on 24th March, 1978 [Coram : Messrs. Justice M.C Trivedi & N.H Bhatt, JJ.]. The appeal was partially allowed to the extent that this Court found that the trial Judge had gone beyond his jurisdiction in directing that the name of the plaintiff be re-entered as an `occupant'. The said direction was, therefore, set-aside. It was observed that it was open to the competent authority to decide the question afresh in accordance with law, after extending reasonable opportunity to the respondent. It appears that since then the matter was decided afresh. The relevant revenue entries were re-examined by the Mamlatdar. Under his order dated 21st April, 1984, he confirmed the relevant entries made in favour of the concerned occupants of the lands. Feeling aggrieved, the petitioners preferred appeal before the Deputy Collector, Bharuch. The Deputy Collector under his order dated 14th September, 1987 allowed the appeal and set-aside the certification of the concerned revenue entries. He further directed that the Mamlatdar should reconsider the matter after calling for the original records from the Civil Court. After the remand, the matter was reconsidered. The Mamlatdar, Jambusar under his order dated 19th May, 1989 set-aside the certification of the concerned revenue entries and held that the concerned occupants, either the tenants or inferior holders, if had not become the owner of the land

as on 31st March, 1969, shall be governed by the Bombay Tenancy & Agriculturaands Act, 1948 and the proceedings be initiated under the said Act. Feeling aggrieved, the petitioners preferred the Appeal No. 27 of 1989 before the Deputy Collector, Bharuch which was dismissed on 16th October, 1989 and the revision preferred before the Collector was dismissed on 10th May, 1991. The further revision to the State Government was dismissed on 2nd July, 1992. Feeling aggrieved, the petitioners have preferred the present petition.

Mr. Shah has relied upon section 4 of the Act and has submitted that on and with effect from the appointed date, all personal inams shall be deemed to have been extinguished. He has, therefore, submitted that on and with effect from the appointed date, the respondents' right to land shall stand extinguished and the petitioners were, therefore, rightly declared to be the occupants of the lands. He has further submitted that though the Deputy Collector under his order dated 14th September, 1987 had directed the Mamlatdar to consider the matter afresh, after calling for the records from the Civil Court, the Mamlatdar has failed to carry out the said direction ie., the Mamlatdar has decided the matter without calling for the records from the Civil Court and without considering the records produced before the Civil Court. He has, therefore, submitted that the petitioners were rightly entered in the revenue records as the occupants of the lands.

In answer to the petition, Mr. Jadeja has submitted that all the authorities below have recorded concurrent finding that the petitioners were tenants of the land and the status of the occupants shall be decided in accordance with Section 5 of the Act. He has also relied upon section 18 of the Act.

Clause (i) of Section 4 of the Act provides for extinguishment of personal inams on and with effect from the appointed date. Sub-clause (ii) thereof provides that, `save as expressly provided by or under the provisions of this Act, all rights legally subsisting on the said date in respect of such personal inams shall be deemed to have been extinguished.' Section 18 of the Act provides that, `nothing in this Act shall in any way be deemed to affect the application of any of the provisions of the Bombay Tenancy & Agricultural Lands Act, 1948 [Bombay LXVI of 1948], to any inam village or inam land or the mutual rights and obligations of an inamdar and his tenants, save in so far as the said provisions are not in any way inconsistent with the expression of this

Act.' Reading Sections 4 and 18 of the Act together, it becomes clear that irrespective of the abolition of Inams, the rights and liabilities under the Bombay Tenancy & Agricultural Lands Act, 1948 would not be affected. Section 5 of the Act provides for liability of inam village or inam land to payment of land revenue and inamdar and permanent holder to be occupant. Sub-section (1) thereof provides inter alia that, `all inam village or inam lands are and shall be liable to the payment of land revenue.' Sub-section (2) thereof reads as under :-

> 2(a) An inamdar in respect of the inam land in his actual possession or in possession of a person holding from him other than an inferior holder, referred to in clause (b) below, or
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> (b) an inferior holder holding inam land on payment of annual assessment only, shall primarily be liable to the State Government for the payment of land revenue in due respect of such land held by him and shall be entitled to all the rights and shall be liable to all obligations in respect of such land as an occupant under the Code or rules made thereunder or any other law for the time being in force.

In a case governed by the above referred Clause (b) of sub-section (2), only the inferior holder holding the Inam land on payment of annual assessment only, would become liable to pay land revenue to the Government and shall be liable to all obligations in respect of such land as an occupant under the Code. In the present case, all the authorities below have recorded concurrent finding that the petitioners were the tenants of the concerned inamdar. The petitioners were not the inferior holders holding the Inam land on payment of revenue assessment only. In view of the said finding, the provisions contained in clause (b) of sub-section (2) of Section 5 cannot be invoked. It is clause (a) of sub-section (2) of Section 5 which shall govern the status of the occupant. It should, therefore, be the concerned inamdar who would be liable to the State Government for the payment of land revenue and who can be said to be the occupant of the inam lands. The authorities below are, therefore, right in directing that the rights be settled under the Bombay Tenancy & Agricultural Lands Act, 1948. The suggestion that the

Mamlatdar, after the remand, had decided the matters without calling for the records of the Civil Court and the matter be decided afresh cannot be accepted at this stage. It is evident that inspite of the efforts made by the Mamlatdar, the records were not made available. In that case, the matters need not be remanded for calling for the records again and reconsidering the matter at issue.

In view of the above discussion, the orders of the authorities below do not warrant interference. Petition is dismissed. Rule is discharged. Interim relief is vacated.

[Ms. R.M Doshit, J.]

Prakash*